WTM/KV/CFID/CFID-TPD/31671/2025-26

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SUB-SECTIONS (1) AND (4) OF SECTION 11, SUB-SECTION (4A) OF SECTION 11, SUB-SECTIONS (1) AND (2) OF SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992; SUB-SECTIONS (1) AND (2) OF SECTION 12A OF THE SECURITIES CONTRACTS REGULATION ACT, 1956

IN THE MATTER OF HINDENBURG ALLEGATIONS AGAINST ADANI GROUP WITH RESPECT TO TRANSACTIONS WITH ADICORP ENTERPRISES PRIVATE LIMITED

In respect of:

Noticee no.	Name of the Noticee	PAN
1	Adani Ports & Special Economic Zone Limited	AAACG7917K
2	Adani Power Limited	AABCA2957L
3	Adicorp Enterprises Pvt. Ltd.	AAACB7826J
4	Mr. Gautam Shantilal Adani	ABKPA0965H
5	Mr. Rajesh Shantilal Adani	ABKPA0962A

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee no. and collectively referred to as "Noticees" unless the context specifies otherwise)

Table of Contents

A. BACKGROUND

1. Hindenburg Research, a United States based financial research firm and shortseller published a report on January 24, 2023, against Adani Group (hereinafter referred to as "***Hindenburg Report"/ "HR***") which *inter-alia*, alleged that Adicorp Enterprises Private Limited (hereinafter referred to as "***Adicorp***" or "***Noticee no.3***") was used as a conduit to route funds from various Adani group companies to fund publicly listed Adani Power Limited (hereinafter referred to as **"*APL***" or "***Noticee no.2***") stating that

   "Despite Adicorp Enterprises' modest financial profile, 4 Adani Group companies lent the company a total of INR 6.2 billion (U.S. $87.4 Million) in 2020. We found no disclosure of these transactions in the financial statements of the Adani Group lenders, several of which are publicly listed. The loans seem financially ill-advised. Given its net profit, it would take Adicorp Enterprises around 900 years to earn enough to pay back the loans even without interest. In 2020, Adicorp Enterprises used its newfound capital to loan INR 6.1 billion (U.S. $86 million) to Adani Power on an unsecured basis. The loan to Adani Power represented about 98% of the funds it received from the 4 other Adani entities. In short, it looks like Adicorp has simply been used to route funds from various Adani Group companies to publicly listed Adani Power".

2. In response to the aforesaid allegations, the Adani Group provided its clarification to stock exchanges namely, National Stock Exchange of India Ltd. and BSE Ltd. vide corporate announcement dated January 29, 2023 and also to Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**), as under:

   "Adicorp is not a related party, and transactions with Adicorp are not 'related party transactions' under laws of Indian or accounting standards and these have been undertaken in compliance with applicable law."

B. ALLEGATIONS MADE AGAINST NOTICEES IN THE SHOW CAUSE NOTICE (SCN)

3. Considering the allegations made in the Hindenburg Report, SEBI carried out a detailed investigation in the matter in order to ascertain whether the listed Adani Group of Companies, by way of any possible material misrepresentation in the financial statements, attempted to circumvent the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**); SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**"); SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") or any Rules or Regulations made thereunder for the period from financial year 2012-13 to 2020-21 (hereinafter referred to as **"investigation period**").

4. With respect to allegations of funding by Adani Group in respect of transactions with the *Noticee no.3*, it was observed in the SCN that Adani Ports & Special Economic Zone Limited **(**hereinafter referred to as **"APSEZ"** or **"*Noticee no.1*")** and *Noticee no.2* had entered into financial transactions with the *Noticee no.3* to route funds from the *Noticee no.1 to the Noticee no.2*. Details of the fund transactions is given under:

B.1. Allegations in the SCN with regard to financial transactions entered into between *Noticee nos. 1 and 2* through the *Noticee no.3*

5. The analysis of bank account statements of the *Noticee no. 3*, showed that during FY 2012-13 and FY 2018-19, the *Noticee no. 1* transferred ₹1282 crore to the *Noticee no. 3* which in turn transferred the same amount to the *Noticee no. 2* on the same day or the next day. Further, the *Noticee no. 2* repaid the amount to the *Noticee no. 3,* with interest which in turn repaid the amount to the *Noticee no. 1* and its' 100% subsidiary ALL on the same day or the next day.

The details of fund transactions entered into between *Noticee nos. 1 and 2* through the *Noticee no. 3* is given below:

Table no. 1

(In Crore)

Sr. no.	F.Y.	Fund recd. from	Amount	Onward transfer to	Amount
1	2012-13	APSEZ	57.00	APL	57.00
2			50.00		50.00
3			200.00		200.00
4	2018-19	APSEZ	500.00	APL	500.00
5			475.00		475.00
	Total		**1282.00**		**1282.00**

6. The transactions observed from the bank account of the *Noticee no. 3 to the Noticee no. 1* and Adani Logistics Ltd. (ALL) which is a 100% subsidiary of the *Noticee no.1*, is as under:

Receipt of loan from ALL by the *Noticee no. 3*

Table no. 2

(In crore)

S. No	Date	Funds received from	Amount	Date	Onward transfer to	Amount
1	02/04/2019	ALL	495.00	03/04/2019	APSEZ	495.00

7. The repayment of amount received from the *Noticee no. 2* to the *Noticee no. 1* or to ALL through the *Noticee no. 3* are as under:

Table no. 3

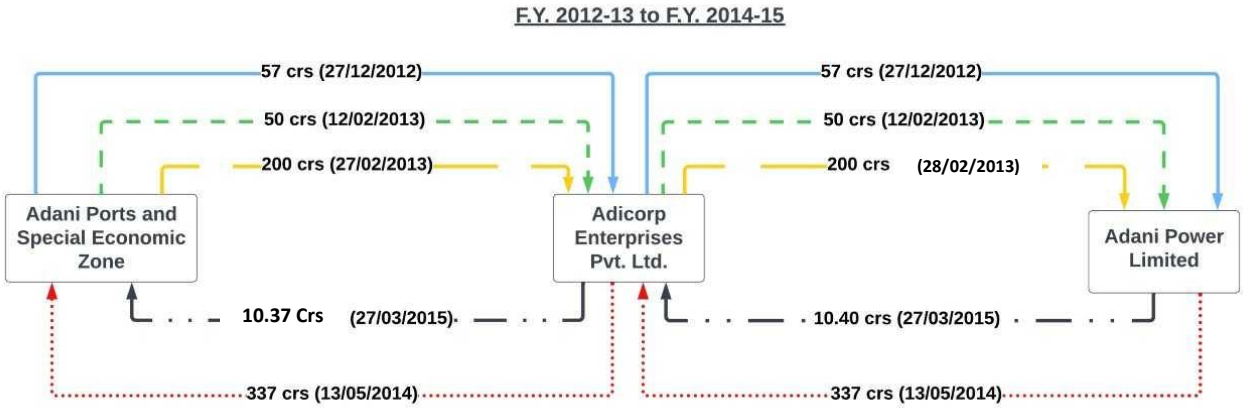
(In crore)

S. No.	F.Y./Date	Receipts from	Amount	Date	Onward transfer to	Amount
1	2014-15	APL	337.00	2014-15	APSEZ	337.00
2			10.40			10.37
3	28/09/2018	APL	475.00	28/09/2018	APSEZ	475.00
4	2020-21	APL	102.85	2020-21	ALL	49.28
					APSEZ	53.54
5			528.62		ALL	518.98
					APSEZ	5.24
	Total receipts		**1453.87**	**Total onward transfers**		**1449.41***

*This amount does not include INR 495 crores returned to APSEZ which is listed at Table no.2 above

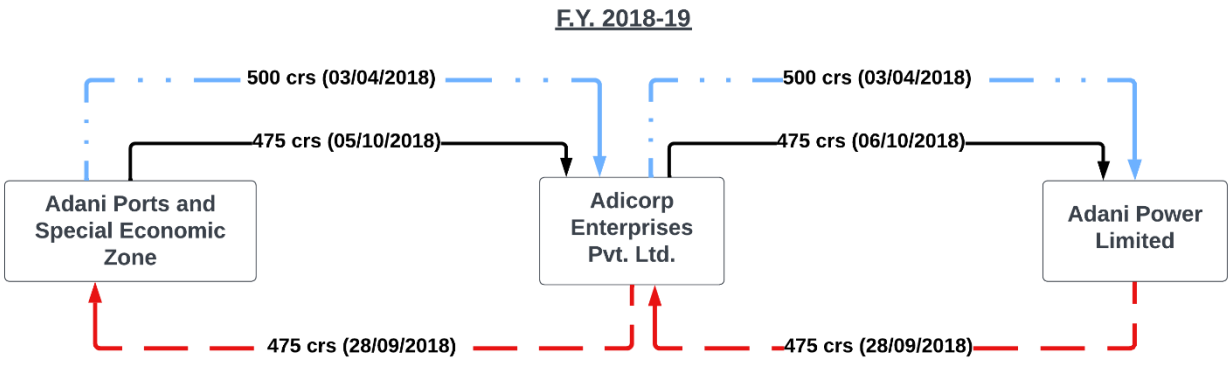
8. Pictorial illustrations of the transactions as narrated in above tables between APSEZ, APL, ALL and Adicorp are as under:

First phase:



Note: INR 307 crores was given as loan by the *Noticee no.1* during the F.Y. 2012-13 to the *Noticee no.3* who in turn gave it to the *Noticee no.2.* Then in F.Y. 2014-15 INR 347.40 was returned to the *Noticee no.3,* who then returned it to the *Noticee no.1.*

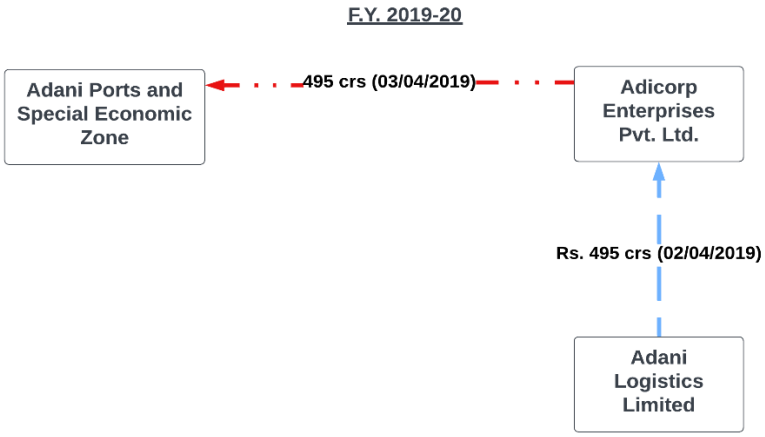
Second Phase:



Note: INR 500 crores was given as loan by the *Noticee no.1* during F.Y. 2018-19 to the *Noticee no.3* who in turn gave it to the *Noticee no.2*. This was returned in part (INR 475 crores) from the *Noticee no.2* to the *Noticee no.3* and from the *Noticee no.3* to the *Noticee no.1* during the same financial year i.e. on September 28, 2018. However, this amount was again given as loan by the *Noticee no.1* to the *Noticee no.3* on October 5, 2018 and by the *Noticee no.3* to the *Noticee no.2* on October 6, 2018,

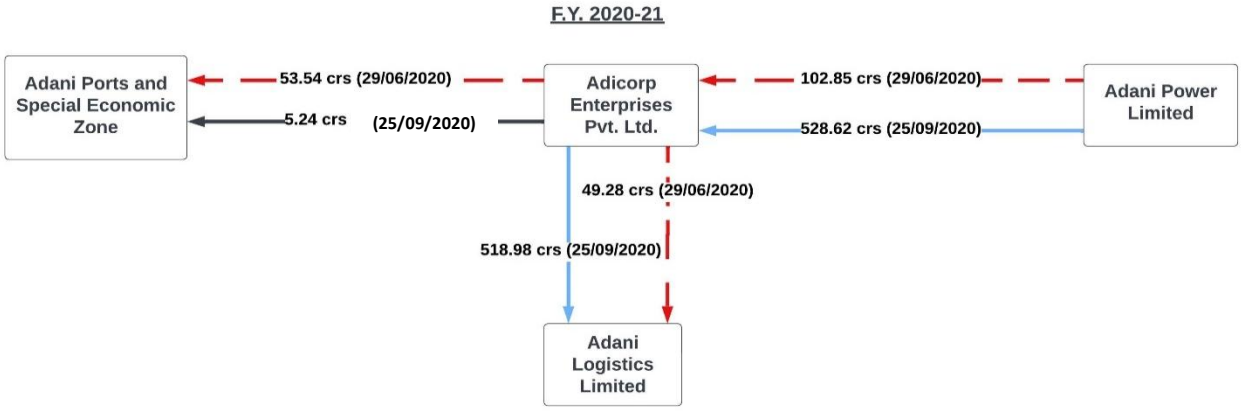
leaving the earlier loan of INR 500 crores outstanding as on March 31, 2019.

Third Phase:



Note : ALL (subsidiary of the *Noticee no.1*) gave INR 495 crores loan to the *Noticee no.3* on April 2, 2019 which was used to return INR 495 crores of loan to the *Noticee no.1* on the next day.

Fourth Phase:



Note: The *Noticee no.2* returned INR631.47 crores to the *Noticee no.3* during F.Y. 2020-21 which was used by it to return INR 568.26 crores to ALL and INR 58.78 crores to the *Noticee no.1* during the same financial year.

9. From the analysis of bank account statements of the *Noticee no. 3* for these relevant periods as well as transactions stated in tables above, following is noted with respect to the amount advanced by the *Noticee no. 1* to the *Noticee no. 3* and further from the *Noticee no. 3* to the *Noticee no. 2* as well as their subsequent repayments:

   a) The *Noticee no.1* gave total loan of INR 1282 crores to the *Noticee no.3* from December 27, 2012 to October 5, 2018 and in return received back INR 1376.15 crores from May 13, 2014 to September 25, 2020.

   b) The *Noticee no.3* gave total loan of INR 1282 crores to the *Noticee no.2* from December 27, 2012 to October 6, 2018 and in return received INR 1453.87 crores from May 13, 2014 to September 25, 2020.

   c) ALL gave loan of INR 495 crores to the *Noticee no.3* on April 2, 2019 and in turn received back INR 568.26 crores on June 29, 2020 and September 25, 2020.

   d) In the entire process, the *Noticee no.1* got extra amount (interest) of INR 94.15 crores, ALL got extra amount (interest) of INR 73.26 crores and the *Noticee no.3* got extra amount (interest) of INR4.46 crores.

10. *Noticee nos. 1, 2 and 3*, confirmed the above transactions and submitted that the fund transfers were related to loan transactions. The *Noticee no.3* further informed that in the process of lending and borrowing, it gained 20 basis points of interest from above loan transactions. In this respect, details of loans availed and lent along with interest charged and repayment among *Noticee nos. 1, 2 and 3* is as under:

Table no.4

(In Crore)

Financial Year	Loan from Noticee no.1/ALL to Noticee no. 3	% of interest	Loan from Noticee no.3 to Noticee no.2	% of interest
FY 2012-13	307.00	11.75%	307.00	11.95%
FY 2014-15*	(347.37)		(347.40)	
FY 2018-19	975.00	10.80%	975.00	11%
FY 2018-19*	(475.00)		(475.00)	
FY 2020-21*	(627.04)		(631.47)	

*The figures in () were loan repayments

11. From the above table, it is observed that the *Noticee no. 3* availed loans from the *Noticee no.1* & ALL at the interest rate of 11.75% during the FY 2012-13 and 10.80% p.a. during the FY 2018-19. Upon availing loans, the *Noticee no. 3* has further lent funds to APL at the interest of 11.95% p.a. during the FY 2012-13 and 11% during the FY 2018-19. Thus, it gained 20 basis points of interest from the above transactions.

12. The SCN has raised question of genuineness of the above mentioned loan transactions for the following reasons:
    a) The *Noticee no.3* did not have much physical presence and its office was very small.
    b) 66% of the debit and 67% of credit transactions of the *Noticee no.3* were with Adani Group.
    c) If the transactions of the *Noticee no.3* with Adani Group was removed then the bank transactions of the *Noticee no.3* show insignificant balance.
    d) Net worth of the *Noticee no.3* is very low compared to loan taken/given.
    e) 99% of the revenue expenses of the *Noticee no.3* is from 'interest'.
    f) Loan agreements were entered into the same day without looking at credit worthiness and loan was forwarded to the *Noticee no.2* on the same day or the next day.
    g) Director of the *Noticee no.3* was a family friend of Adani family for the last 30 years.

B.2. Allegations in the SCN with respect to the requirement of disclosures by *Noticee no.1* and *Noticee no.2* with respect to Audit Committee review/approvals for the alleged transactions**:**

13. During the period of transactions *i.e*, F.Yrs. 2012-13 to 2014-15 and F.Yrs. 2018-19 to 2020-21, the *Noticee no.1* found to have disclosed the *Noticee no.2* as its related party in its Annual Reports and vice versa and therefore, it has been alleged that these listed entities were under obligation to ensure compliance of provisions of law including the related party transaction (**RPTs**) as defined under

clause (zc) of sub-regulation(1) of regulation 2 of the LODR Regulations read with sub-section 76 of section 2 of the Companies Act, 2013.

14. In terms of Accounting Standard-18 (hereinafter referred to as **"AS-18**") and Indian Accounting Standard 24, (hereinafter referred to as "**Ind AS-24**"), in considering each possible related party relationship, attention has been drawn in the SCN to the substance of the relationship and not merely the legal form. It has also been stated that the net effect of the said standard while considering each related party relationship **is to disregard the legal form of these transactions, look only at the substance, and uncover the true essence of transactions**.

15. On perusal of the Related Party disclosures made by *Noticee nos.1 and 2* under the relevant heads in their Annual Reports for F.Yrs.2012-13, 2013-14, 2014-15, 2018-19, 2019-20 and 2020-21, it is observed that above stated loan transactions that were allegedly routed through Adicorp had not been disclosed in the Annual Reports for relevant years by *Noticee nos.1 and 2*. It has been alleged that the above lack of disclosures were corroborated by Mr. Muthukumaran Doraiswami, CFO of the *Noticee no.1*, in his statement recorded on June 02, 2023 and by Mr. Shailesh Sawa, CFO of the *Noticee no.2*, in his statement recorded on June 01, 2023. They have stated to have confirmed that they did not make any disclosures regarding their transactions with Adicorp.

16. It has been further alleged that the information provided in the financial statements must faithfully represent the substance of the transaction rather than its legal form, to understand its effect on the reporting entity's financial position or performance.

17. It has been also alleged that transactions routed by the *Noticee no.1* to the *Noticee no.2* through the *Noticee no.3* for the period FY 2012-13 was required to be submitted to the Audit Committee for its review in terms of sub-entry (2) of

entry (E) of sub-clause (II) of Clause 49 of the then Listing Agreement. Similarly, with respect to the transactions done in FY 2018-19, it has been alleged that in terms of the LODR Regulations, *Noticee nos. 1 and 2* were required to obtain approval from the Audit Committee before entering into transactions. However, no such approval was obtained by *Noticee nos.1 and 2*.

B.3. Allegations in the SCN with respect to requirements of Board approval/shareholder approval for the alleged transactions between *Noticee nos.1 and 2* :

18. It has been noted in the SCN that, the *Noticee no.1* provided details of delegation of powers to the Finance Committee, where approvals were accorded for transactions with the *Noticee no.3*. Likewise, the *Noticee no.2* provided details of delegation of powers to Management Committee where approvals were accorded for transactions with the *Noticee no.3*.

19. It has been alleged that Mr. Rajesh Adani (*Noticee no.5*) was common member for the Finance Committee meeting of the *Noticee no.1* and Finance Committee meeting of the *Noticee no.2* based on which loans transactions were carried out during the FY 2012-13. Further, Mr. Gautam Adani and Mr. Rajesh Adani (*Noticee nos. 4 and 5* respectively) were common members on the Finance Committee of the *Noticee no.1* and Management Committee of *Noticee no.2*. Mr. Gautam Adani and Mr. Rajesh Adani, being on both the committees approved the loan transactions that have been executed or entered into with the *Noticee no.3*. From the above, it is alleged that both *Noticee nos.4 and 5*, had knowledge of the transactions and were instrumental in routing funds from the *Noticee no.1* to the *Noticee no.2* through the *Noticee no.3*.

20. It is also alleged that *Noticee nos.4 and 5*, individually and through their trusts are promoters of *Noticee nos.1 and 2*, during the period of transactions. Further, the *Noticee no.4* has been director in *Noticee nos.1 and 2*, since December 26, 2005 and July 01, 2007 respectively and the *Noticee no.5* has been the director of *Noticee nos.1 and 2*, since June 12, 2007 and May 26, 1998 respectively.

21. It has been further alleged that, being at the helm of the affairs of the company, both *Noticee nos. 4 and 5*, during the entire investigation period, were KMPs and persons in charge of the financials transactions stated above and further being responsible for managing the affairs of *Noticee nos. 1 and 2*, the above two *Noticees* i.e. *Noticee nos. 4 and 5* are allegedly viewed as persons who have knowingly undertaken, and approved the transactions in violation of various regulatory requirements.

22. The SCN also alleged that, the losses reported; changes in the net worth and the interest coverage ratio, indicated the weak financial status of the *Noticee no. 2* during the investigation period.

23. From the set of approvals obtained for transacting the financials as narrated above, and disclosure made in respect of said transactions, it is further alleged that shareholders of *Noticee nos. 1 and 2* were kept in dark and not informed of the alleged funds/loans transactions that transacted between the *Noticee no. 1* and the *Noticee no. 2* through the conduit entity i.e. the *Noticee no. 3*.

B.4. Specific allegations alleged in the SCN

24. After discussing various alleged violations (summarized above), the following allegations have been specifically made against *Noticees* in the SCN:

    24.1. *Noticee nos.1 and 2*, have structured transactions to conceal the actual related party transactions and to circumvent the related party provisions under the then listing agreement and LODR Regulations. The transactions have been structured in a manner, by routing funds through conduit entity i.e., the *Noticee no.3* so that the same could be concealed from the audit committee and shareholders and compliance with the provisions of the then Listing Agreement/ LODR Regulations.

    24.2. The borrowing and lending transactions by *Noticee nos.1 and 2*, through the *Noticee no. 3* were '*in substance*' related party transactions and were required to be disclosed as such in their respective financial statements.

24.3. *Noticee nos. 1 and 2*, in their Annual reports had knowingly made incorrect disclosures and misrepresented Related Party disclosures for six years i.e., F.Yrs. 2012-13; 2013-14; 2014-15; 2018-19; 2019-20 and 2020-21.

24.4. *Noticee nos.1 and 2*, have not complied with the required Audit Committee review/ approvals for two years (2012-13 & 2018-19).

24.5. There are no correct and fair disclosure of such transactions and outstanding balances in the Annual Report of *Noticee nos.1 and 2* for six years i.e., F.Yrs. 2012-13; 2013-14; 2014-15; 2018-19; 2019-20 and 2020-21.

24.6. The *Noticee no.4*, being the Chairman & Managing director of the *Noticee no.1* and also a director of the *Noticee no.2*; and the *Noticee no.5* being the Managing director of the *Noticee no.2* and also a director of the *Noticee no.1* and further being part of the Finance Committee and Management Committee while approving the above stated financial transactions are further alleged to be engaged in acts of devising a scheme and an artifice to conceal related party transactions, that come under the ambit of then Listing agreement /SEBI LODR Regulations by circumventing the relevant laws governing the related party transactions.

24.7. *Noticee nos. 4 and 5* have made wrong and false certification of financials of *Noticee nos.1 and 2* for six years *i.e.*, F.Yrs. 2012-13; 2013-14; 2014-15; 2018-19; 2019-20 and 2020-21.

24.8. The *Noticee no. 3* has knowingly facilitated the execution of the above scheme and artifice created by *Noticees nos. 1, 2, 4 and 5*, whereby funds have been routed through it.

25. The violations alleged against *Noticees* are as follows:

25.1. *Noticee nos.1 and 2*:

a) Clause 32 and 50 of listing agreement read with AS-18-Related Party Disclosures, clause 49(II)(E)(2) of listing agreement (for the period- April 01, 2012 to September 30, 2014).

b) Clause 32, clause 49(1)(C)(d) of listing agreement and Clause 50, of listing agreement read with AS-18-Related Party Disclosures and clause 49(III)(D) of listing agreement (for the period- October 01, 2014 to November 30, 2015)

c) Regulations 4(1)(a),(b),(c),(h),(i); 4(2)(e),(i); 23(2); 34(3) read with para A(1) and A(2) of Schedule V, regulation 48 of the LODR Regulations read with IndAS-24 (for the period - December 01, 2015 to March 31, 2016 and from April 1, 2018 to March 31, 2021).

d) Section 12A(b) and (c) of the SEBI Act, 1992 read with regulations 3(c) and (d); 4(1); and 4(2)(f) and (r) of the PFUTP Regulations.

e) Regulation 4(2)(k) of the PFUTP Regulations (for period from February 01, 2019).

25.2. *Noticee no.3*:

a) Section 12A(b) and (c) of the SEBI Act, 1992 read with regulation 3(c) and (d); 4(1); and 4(2) (f) and (r) of the PFUTP Regulations;

b) Regulation 4(2)(k) of the PFUTP Regulations (for period from February 01, 2019).

25.3. *Noticee nos. 4 and 5*

a) Clause 49(I)(D)(2)(b),(f),(g),(h) and clause 49(I)(D)(3)(c),(f),(l) of listing agreement (for the period- November 01, 2014 to November 30, 2015)

b) Regulations 4(2)(f)(ii)(2),(6),(7),(8); and 4(2)(f)(iii)(1),(3),(6),(12) of the LODR Regulations (for the period - December 01, 2015 to March 31, 2016 and from April 1, 2018 to March 31, 2021).

c) Section 12A(b) and (c) of the SEBI Act, 1992 read with regulation 3(c) and (d); 4(1); and 4(2)(f) and (r) of the PFUTP Regulations.

d) Regulation 4(2)(k) of the PFUTP Regulations for period from February 01, 2019.

read with Section 27 of the SEBI Act, 1992

26. Vide the SCN, *Noticee nos.1 and 2* were called upon to show cause as to why suitable directions as deemed fit should not be issued under sub-section (1) and (4) of section 11 and sub-section (1) of section 11B of the SEBI Act, 1992, read with sub-section (1) of section 12A of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCR Act**"). Further, *Noticee nos. 1 and 2* were also called upon to show cause as to why suitable monetary penalty be not imposed under sub-section 4A of section 11, sub-section (2) of section 11B, read with sub-section (b) of section 15A, 15HA, 15HB of the SEBI Act 1992, and sub-section (2) of section, 12A read with sub-section (b) of section 23A, 23H of the SCR Act, 1956, r/w Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, and Rule 5 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, for the violations alleged herein above.

27. The *Noticee no. 3* was called upon to show cause as to why suitable monetary penalty under sub-section (4A) of section 11, sub-section (2) of section 11B, read with Section 15HA of the SEBI Act, 1992 r/w Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, be not imposed for the violations alleged herein above.

28. *Noticee nos. 4 and 5* were called upon to show cause as to why suitable directions as deemed fit, should not be issued under sub-sections (1) and (4) of section 11 and sub-section (1) of section 11B, of the SEBI Act, 1992 and sub-section (1) of section 12A of the SCR Act, 1956. Further, *Noticee nos. 4 and 5* were also called upon to show cause as to why suitable monetary penalty be not imposed under sub-section (4A) of section 11, sub-section (2) of section 11B, read with sub-section (b) of section 15A, 15HA and 15HB of the SEBI Act, 1992 and sub-section (2) of section 12A read with 23H and 24 of the SCR Act, 1956, r/w Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, and Rule 5 of the Securities Contracts (Regulations) (Procedure

for Holding Inquiry and Imposing Penalties) Rules, 2005, for the violations alleged herein above.

29. Based on the findings of investigation, the SCN dated January 15, 2024 was issued to all *Noticees*. As per the request of *Noticees* inspection of documents was provided on February 16, 2024 to the *Noticee no. 3* and on February 22, 2024 and March 7, 2024 to *Noticees nos. 1, 2, 4 and 5.* The *Noticee no. 3* vide letter dated March 2, 2024 filed its reply to the SCN. On the request of *Noticees nos. 1, 2, 4 and 5* extension of time was granted for filing of replies to the SCN. *Noticees nos. 1, 2, 4 and 5* filed their replies to the SCN vide letter dated April 22, 2024.

C. HEARING AND SUBMISSIONS OF NOTICEES

C.1. Hearing

30. Pursuant to submission of replies to the SCN, an opportunity of personal hearing was granted to *Noticees* on June 6, 2024. However, all *Noticees* requested for an adjournment of hearing and the same was acceded to. Hearing was then fixed for September 11, 2024, which was attended by legal representatives of *Noticees*. The matter was partly heard and the next hearing was scheduled for September 19, 2024. The legal representatives of *Noticees* continued with their submissions on the scheduled date. The matter was partly heard and the next date of hearing was scheduled for October 1, 2024. However, due to certain administrative exigencies, the hearing was re-scheduled for October 3, 2024. The hearing in the matter was concluded on the said date. During the hearing, the legal representatives of *Noticees* made submissions in line with the replies filed by them. *Noticees* filed their post hearing submissions within two weeks' of the timeline granted to them.

31. It was noted that *Noticees* had earlier filed settlement applications on various dates in March 2024. It was noted that in terms of sub-regulation (1) of regulation 8 of the SEBI (Settlement Proceedings) Regulations, 2018, the filing of an

application for settlement of any specified proceedings did not affect the continuance of the proceedings save the passing of the final order which was required to be kept in abeyance till the disposal of settlement application. Accordingly, hearings were completed but issuance of the final order was kept in abeyance till the disposal of settlement applications. Further, *Noticees* subsequently withdrew their settlement applications on various dates in June 2025 and accordingly the case was then considered for issuance of the final order.

C.2. Summary of replies filed by *Noticees*

Reply to SCN was filed by *Noticee nos. 1, 2, 4 and 5* vide letter dated April 22, 2024 and by the *Noticee no.3* vide letter dated March 2, 2024. Post hearing submissions were filed by *Noticee nos. 1, 2, 4 and 5* vide letter dated October 22, 2024 and by the *Noticee no.3* vide letter dated October 18, 2024. A summary of submissions made by *Noticees* is as under:

32. Main points from submissions of *Noticee nos.1, 2, 4 and 5* are summarised below:

32.1. The SCN is erroneously based on the report of Hindenburg which has no evidentiary value and no reliance could be placed thereon. In support of their plea, *Noticees* have made reference to Judgment of Hon'ble Supreme Court passed in the matter of ***Vishal Tiwari vs Union of India***, ***2024 SCC Online SC15***, wherein the Hon'ble Court, inter alia, directed that "*SEBI and investigative agencies of the Union Government shall probe into whether the loss suffered by Indian investors due to conduct of Hindenburg Research and any other entities in taking short positions involved any infraction of the law and if so, suitable action shall be taken*". SEBI is a party in the said matter and therefore ought not to have issued the SCN based on the report of Hindenburg.

32.2. The SCN is vague and does not provide adequate details for an appropriate response from *Noticees*. The SCN is required to contain the specific direction and the exact nature of the measures proposed to be adopted. SCN has not clearly set out specific charges and the basis of allegations of the provisions of the SEBI Act and the PFUTP Regulations. The SCN is only based on suspicion and suspicion cannot be placed as proof or evidence. In support of this plea reliance has been placed on the following judgments of the Hon'ble Supreme Court: *(i) Gorkha Security Services vs Govt. of NCT of Delhi & Ors., (2014) 9SCC 105; (ii)Royal Twinkle Star Club Pvt. Ltd. vs SEBI (2016) SCC Online SAT 16; (iii) Gian Mahtani and Anr vs The State of Maharashtra and Anr.(1971)(2) SCC 611,* and order of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") in the matter of *Swaranganga Trading Pvt. Ltd. vs Adjudicating Officer, SEBI (Appeal no.74 of 2009)*.

32.3. The allegations in the SCN are belated and suffer from inordinate delay. The transactions pertain to the period between 2012-13 to 2020-21. The SCN dated January 15, 2024 is issued after a decade of the occurrence of the transactions. As per the LODR Regulations, listed entities are required to preserve documents for a period of 8 years. These documents are of prime relevance with respect to allegations in the SCN. Delay in allegations made in the SCN has affected *Noticees'* ability to defend its case. In support of this plea, reference has been made to the following judgements of the Hon'ble SAT: *(i)Parag Sarda vs SEBI (Appeal no.279 of 2020); (ii) Alps Motor Finance Ltd. vs SEBI (Appeal no. 620 of 2023); and judgement of Hon'ble Supreme Court in the matter of SEBI vs Bhavesh Pabari (2019) SCC Online SC 294*.

32.4. The *Noticee no.1* was called upon to explain actions of Adani Logistics Ltd. (ALL) which is in negation of the principle of distinct corporate identity. ALL is a 100% subsidiary of the *Noticee no.1* and under the prevailing provision of the LODR Regulations, the *Noticee no.1* is required to show consolidated

financials incorporating financial data of ALL. This obligation cannot nullify the distinct identity of ALL as an independent corporate person and was clubbed with the *Noticee no.1*. The *Noticee no.1* cannot be called upon to explain the business decisions of ALL as if it were its own.

32.5. *Noticee nos.1, 2 and 3* are separate, distinct and independent legal entities and no facts have been brought out in the SCN to refute the same. The SCN does not in any manner allege or assert that the *Noticee no.3* is a related party of the *Noticee nos.1 and 2*. The SCN also does not allege that the transactions of the *Noticee no.1* and the *Noticee no.2* with the *Noticee no.3* constitute *"a transfer of resources, services or obligations between a listed entity and a related party*". The only acquaintance brought out is the statement recording of Mr. Aadarsh Shah (son of Mr. Utkarsh Shah), Director of the *Noticee no.3*, that he knew the Adani Family for more than 30 years and there is no other connection brought out. Further, Mr. Aadarsh Shah has stated that it is his father who carried out these transactions and that he was not aware of the same. Hence, no reliance can be placed on the statement of Mr. Aadarsh Shah. There are no common directors in *Noticee nos.1 and 2* with the *Noticee no.3*, nor was there any common address or employees. *Noticee nos. 1, 2 and 3* are different entities, distinct from each other and managed by their respective boards. The assumption of any connection or relationship between *Noticee nos.1 and 2* with the *Noticee no.3* is beyond the transactions effected between them, lacks foundation.

32.6. The transactions of the *Noticee no.1* and the *Noticee no.2* with the *Noticee no.3* have been carried out after following proper procedures and approvals and have been duly reported in the various filings made by *Noticee nos. 1 and 2*. There is no legal infirmity in the decision of the *Noticee no.1* to lend funds to the *Noticee no. 3* and for the *Noticee no.2* to borrow funds from the *Noticee no.3*. Therefore, it is not open for SEBI to question the basis and rationale of business decisions of the *Noticee no. 1* and the *Noticee no.2* regarding utilization of resources available with it. *Noticee nos.1 and 2* are

not related to the *Noticee no. 3* and therefore the transactions between them cannot be termed as '*related party transactions'*.

32.7. It is well settled that where a transaction gives rise to rights and obligations it cannot be disregarded as being a scheme/sham.

32.8. It is impermissible for SEBI to invoke '*substance over form*' or '*spirit of the law*' approach in view of the clear language of the provisions and their intended application. As per *Noticee nos.1 and 2*, prior to 2021, the definition of '*related party transactions*' as per para 10.2 of AS-18 and clause (zc) of sub-regulation (1) of regulation 2 of the LODR Regulations, only direct transactions between related parties were covered and not indirect transactions. Clause (zc) of sub-regulation (1) of regulation 2 of the LODR Regulations with respect to transactions between listed company through unrelated parties came into force from April 1, 2023. Hence, transactions of *Noticee no. 1 and 2*, through the *Noticee no.3* does not come under the definition of '*related party transactions*'. The requirement to comply with the LODR Regulations and Listing agreement arises only if the entities fall under the '*related party*' definition as applicable before the amendment, which came into effect from April 1, 2023 and hence not applicable in the instant case.

32.9. *Noticee nos. 1 and 2* are not related parties to the *Noticee no.3* under AS-18 or IndAS-24. Therefore, the transactions of the *Noticee no.1* with the *Noticee no.3*; and the transactions of *Noticee no.2* with the *Noticee no.3* are not related party transactions, even for the purpose of Ind-AS 24. Further, para 11 of IndAS-24 states that '*providers of finance*' are not treated as related parties by virtue of their normal dealings with an entity even though they may affect the freedom of action of any entity or participate in its decision making process. The same principle finds place in AS-18 also. Thus, IndAS-24/AS-18 would exempt *Noticee nos.1 and 2* from treating the *Noticee no.3* as a related party for its transactions. It is SEBI's stated case that, the *Noticee no.3*, which is a non-related entity has been used as a

conduit to circumvent the provisions applicable to related party transactions. The SCN does not allege that the *Noticee no.3* is a related party of the *Noticee no.1* or of the *Noticee no.2* and hence cannot invoke Para-10 of Ind-AS 24 which provides guidance for assessment of related party relationship between two entities. Therefore, Ind-AS 24 does not apply.

32.10. For the investigation period, prior to the amendment, the definition of '*related party transactions*' contained in clause (zc) of sub-regulation (1) of regulation 2 of the LODR Regulations only covered transactions directly between a listed entity and a related party [defined under clause (zb) of sub-regulation (1) of regulation 2 of the LODR Regulations]. The listing agreement defines '*related party transactions*' contained in AS-18, which only covers transactions entered into directly between a listed entity and a related party. So, indirect transactions were not covered under the definition of related party transactions during the investigation period. SEBI's Memorandum on '*Review of regulatory provisions on Related Party Transactions*' which was placed before SEBI Board on September 28, 2021 explains that the amendment to the definition of '*related party transaction'*, '*was proposed to be broadened to include transactions which are undertaken, whether directly or indirectly with the intention to benefitting related parties".* Further, SEBI by way of sixth amendment to the LODR Regulations in 2021 expanded the definition of '*related party transactions*' prospectively. Under this amendment, transaction between listed entity and third parties/unrelated parties are inter alia treated to be the related party transactions if the purpose of such transactions was to benefit a related party of the listed entity. This amendment was prospective in nature and comes into effect from April 1, 2023. If the definition of '*related party transactions*' always included within its purview, indirect transactions undertaken by listed entity through unrelated parties which benefitted its related parties there would have been no need for SEBI to introduce clause (zc) in sub-regulation (1) of regulation 2 of the LODR Regulations, which expressly provide its deferred prospective

operation. Following judgements of Hon'ble Supreme Court has been relied upon by *Noticees* in support of this submission: (i) *Union Bank of India vs Martin Lottery Agencies (2009) 12 SCC 209; (ii) SEBI vs Magnum Equity (2015) 16 SCC 721; (iii) C Gupta vs Glaxo Smithkline Pharamceuticals Ltd.(2007) 7 SCC 171*.

32.11. *Noticee nos.1 and 2* fully complied with the un-amended provisions of the LODR Regulations applicable during the investigation period and the Listing Agreement. The applicable un-amended clause (zb) of sub-regulation (1) of regulation 2 of the LODR Regulations defines a related party as "*a related party*" as defined under sub-section 76 of section 2 of the Companies Act, 2013 or under the applicable accounting standards. None of the conditions provided under sub-section (76) of section 2 of the Companies Act, 2013 applies to the relation between *Noticee no.1 or 2* on the one hand and with *the Noticee no. 3* on the other hand. Further, *Noticee nos.1 and 2* on one hand and the *Noticee no.3* on the other hand are not even related parties under AS 18 or Ind-AS 24. Therefore, the transactions between them are not related party transactions even for the purpose of Ind-AS 24. In this regard, *Noticees* have relied on the order dated September 26, 2019 passed by the Hon'ble SAT in the matter of *ITC vs SEBI,* wherein SEBI submitted that the plain language of the definition/provision would show that a specific transaction would amount to related party transaction only when the transaction is between a company and its related party, which was not the case. Hon'ble SAT accepted the submissions made by SEBI and held that since the transactions in question were with third parties, they could not be classified as related party transactions. *Noticees* submitted that, SEBI is bound by the decision of Hon'ble SAT, which held that the language of the provision needs no interpretation, as it is plain. It is imperative that SEBI being a regulatory authority, takes a consistent stand.

32.12. SEBI's reliance on Ind-AS 24 and AS-18 to incorporate the substance over form doctrine is misplaced since the accounting standard does not anywhere state that in considering a related party relationship, the *'substance'* of the relationship has to be taken into account and not the legal form. In the absence of any such principle, invocation of substance over form doctrine in respect of transactions prior to the coming into force of the LODR Regulations is erroneous.

32.13. SEBI impermissibly seeks to apply amended sub-clause (ii) of clause (zc) of sub-regulation (1) of regulation 2 of the LODR Regulations retrospectively. The SCN invokes the "*substance over form*" doctrine to find that the impugned transactions are "*related party transactions*" since the *Noticee no.3* purportedly transferred funds received by it from the *Noticee no.1* to the *Noticee no. 2*. The SCN erroneously applies the concepts introduced by way of amended Regulation retrospectively to the investigation period, which is not legally permissible. In support of this plea, *Noticees* have relied upon the judgments of the Hon'ble Supreme Court in the matter of: *(i)Sedco Forex International Drill Inc. & Ors. vs Commissioner of Income Tax Dehrardun and Another [(2005) 12 SCC 717]; (ii)Virtual Soft Systems Ltd. vs Commission of Income Tax, Delhi [(2007) 9 SCC 665*].

32.14. SEBI's invocation of the doctrine of "*substance over form*" in the present case is wholly devoid of merit. Reliance has been placed on the judgement of Hon'ble Supreme Court in the matter of *(i)Vodafone International Holdings B.V. vs Union of India [(2012) 6 SCC 613]; (ii)Rananjaya Singh vs Baijnath Singh & Ors [(1954) 3 SCC 314]* wherein, it is held that the said concepts of "*substance over form*" or "*spirit of law*" cannot be invoked in opposition of the plain language of the applicable provisions.

32.15. The SEBI Act, does not either expressly or by necessary implication, give SEBI the power to make regulations having retrospective effect. In the matter of *SEBI vs Alliance Finstock [(2015) 16 SCC371]* before the Hon'ble

Supreme Court, SEBI itself conceded that the SEBI Act did not empower it to make regulations having retrospective effect. Thus, SEBI cannot apply the definition in the LODR Regulations retrospectively. Having expressly provided that amendments to the LODR Regulations would have prospective operation, it is not open to SEBI to now apply the amended definitions retrospectively. In support of this plea, reliance has been placed on the judgements of the Hon'ble Supreme Court in the matter of: *(i) Keshavji Ravji vs CIT ([1990) 2 SCC 231]; (ii) Collector, Vellore District vs K Govindraj [(2016) 4 SCC 763]; (iii)Sunil Khaitan vs SEBI [(2023) 2 SCC 643*]];(*iv) Ritesh Agarwal vs SEBI (2008) 8 SCC 205; (v)Federation of Indian Minerals Industries and Ors vs Union of India & Anr, (2017) 16 SCC 186*.

32.16. The Hon'ble Supreme Court vide its order dated March 2, 2023, directed SEBI to keep the Expert Committee constituted by it to be apprised about its investigations. The Committee presented its report dated May 6, 2023, based on the detailed factual briefing from SEBI, inputs from market participants and material of record. Based on the findings of the Expert Committee Report with regard to the prospective nature of the 2021 amendments to the LODR Regulations, the petitioners in the matter of *Vishal Tiwari vs Union of India (2024 SCC Online SC15)* in their prayer, sought an order from the Hon'ble Supreme Court directing SEBI to revoke the said amendments contending that the amendments were ineffective to curtail circumvention of the related party disclosure requirements. The Hon'ble Supreme Court accepted the findings of the Expert Committee and came to the conclusion that there was no regulatory failure on the part of SEBI in giving deferred effect to the 2021 amendment. The aforesaid prayer of revoking the 2021 amendment was expressly rejected by the Hon'ble Supreme Court and noted that SEBI had traced the evolution of the regulatory framework and explained the reasons for the changes in its regulations. The Hon'ble Supreme Court found that the procedure followed

in arriving at the current shape of the regulations was not tainted with any illegality.

32.17. Erroneous reliance is placed on the statements of Mr. Muthukumaran Dorairswami and Mr. Sahilesh Sawa: The impugned transactions were not related party transactions. So, the statements of Mr. Muthukumaran Dorairswami and Mr. Sahilesh Sawa to SEBI are a reiteration of the prevailing legal position. That being the case, their statements cannot be said to be a corroboration of any purported concealment on the part of the *Noticee no.1* or the *Noticee no.2*.

32.18. The SCN refers to the alleged low net worth and net profit of the *Noticee no.3* to cast a doubt on the genuineness of the transactions entered into by the *Noticee no.1* with the *Noticee no.3*. This however, is without merit. Low net worth and net profit cannot form the sole basis for doubting the creditworthiness of the *Noticee no.3*. Further, the transactions were undertaken in the usual course of business and pursuant to authorization of the Board of Directors of *Noticee nos.1 and 2*. In support of this submission, *Noticees* have placed reliance of the following judgement of the Hon'ble Delhi High Court in the matter of *CIT vs Vrindavan Farms (P) Ltd*. (order dated August 12, 2015).

32.19. A charge under the PFUTP Regulations read with clauses (b) and (c) of section 12A of the SEBI Act, can only be sustained if SEBI establishes the existence of '*dealing in securities*' and '*fraud*'. Hon'ble Securities Appellate Tribunal in the orders of (*i) Price Waterhouse Coopers & Co. and Others vs SEBI [(2019) SCC SAT 165] (ii) NSE & Others vs SEBI (Appeal no.334 of 2019); (iii) Ramswarup Sarda vs SEBI (Appeal no. 30 of 2013),* held that for a charge to be sustained under the PFUTP Regulations, SEBI must establish both '*dealing in securities*' as well as '*fraud*' in '*dealing in securities*' i.e. inducement to deal in securities and that '*fraud*' must be proved based on evidence.

32.20. Transactions of *Noticee nos.1 and 2* during the investigation period did not violate the provisions of the SEBI Act and the PFUTP Regulations: The charge of the PFUTP Regulations alongwith clause (b) of section 12A of the SEBI Act will sustain only if SEBI establishes the existence of "*dealing in securities*" and "*fraud*". The explanation to sub-regulation (1) of regulation 4 of the PFUTP Regulations was inserted in October 19, 2020 and hence this amendment is not applicable for transactions prior to FY 2020-21.

32.21. No dealing in securities has been established by SEBI. The amendment to the definition of '*dealing in securities*' is *w.e.f*. February 1, 2019 and after this amendment only one approval has been granted for the transactions alleged in the SCN. All the other approvals were taken before the amendment to the definition of '*dealing of securities*'.

32.22. In the matter no fraud is established by SEBI. The definition of '*fraud*' under clause (c) of sub-regulation (1) of regulation 2 of the PFUTP Regulations includes '*dealing in securities*' and '*to induce others to deal in securities*'. Both these parameters have not been fulfilled in the instant matter. The SCN does not provide any facts relating to impact on trading in securities or the essential ingredient of '*fraud*' such as '*manipulation of securities*.' The mere fact that the *Noticee no.3* received money from the *Noticee no.1* and the same was then transferred to the *Noticee no.2* does not qualify to meet the evidentiary standard for consideration of violation of provisions of the SEBI Act and the PFUTP Regulations. Evidence provided by SEBI does not satisfy the evidentiary requirement necessary for establishing violation of provisions of the SEBI Act and the PFUTP Regulations. SCN has not provided any reason or demonstrated any need to enter into a scheme or artifice by *Noticees* to act in violation of the SEBI Act and the PFUTP Regulations.

32.23. The SCN does not bring out any loss to investors or gains made by anyone on account of the supposed lapses. There has been no diversion of funds nor was any manipulation in the price of the scrip or any unfair advantage to any shareholder or investor. Admittedly, all monies that were lent by the *Noticee no.1* have been repaid, along with interest. Therefore, there was no diversion or siphoning off funds and in fact, there is not even an allegation of diversion or siphoning off of funds in the SCN. Consequently, the question of fraud and / or violation of provisions of the PFUTP Regulations read with the SEBI Act, does not arise. The *Noticee no.1* has not committed any default, let alone '*repetitive default*'. The *Noticees* have referred to the judgement of Hon'ble Supreme Court in the matter of *SEBI vs Kanaiyalal Baldevbhai Patel [(2017) 15 SCC 1],* wherein the scope and applicability of the PFUTP Regulations was interpreted.

32.24. It is further submitted that one of the fundamental constitutional protections available to a person is that a person cannot be penalized for any wrongdoing except for the violation of a law that was in force at the time of commission of the act alleged to be committed.

32.25. Knowledge of the violation and absence of due diligence are essential ingredients which have not been satisfied in case of *Noticee nos. 4 and 5* and hence Section 27 of the SEBI Act cannot be invoked on these *Noticees*. Section 27 cannot be invoked merely based on the designation held by *Noticees* in the companies. The decision of the finance committee and board of directors with respect to the approval of loan transactions cannot be attributed only to *Noticee nos. 4 and 5* and it was a collective decision of the committee and Board of Directors. Section 27 of the SEBI Act, with respect to vicarious liability come into effect from March 8, 2019 and therefore the liability starts only from that date, in case of civil liability on the company. The order passed by Hon'ble SAT in the matter of *Reliance Industries vs SEBI* (2023) supports this contention of *Noticee nos. 4 and 5*. Further, after March 8, 2019, the *Noticee no. 1* has not given any loans to

the *Noticee no.3*. The *Noticee no. 2* has also not availed of any fresh loans from the *Noticee no.3*. None of the transactions alleged to have been carried out by the *Noticee no.1* or the *Noticee no.2* are after March 8, 2019 and hence provisions of the PFUTP Regulations pursuant to applicability of Section 27 of the SEBI Act, does not apply. Therefore, *Noticee nos. 4 and 5* cannot be held liable for any alleged violations by *Noticee nos. 1 and 2*.

32.26. The SCN fails to consider that the *Noticee no.4* is a non-executive director of the *Noticee no.2* during the entire investigation period. *Noticee nos.4 and 5* discharged all their duties as directors of *Noticee nos.1 and 2*. The Hon'ble Supreme Court in the matter *of Chintalapati Srinivasa Raju vs SEBI and Others [(2018) 7 SCC 443] h*eld that *"Non-executive directors are, therefore persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company*". The *Noticee no.4* submits that for this reason the ingredients of Section 27 of the SEBI Act are not satisfied in respect of *Noticee nos.1 and 2* from July 11, 2020 and hence all such allegations against the *Noticee no.4* are devoid of merits.

32.27. Related party transactions per se not considered unlawful and is a common form of business. The regulatory framework only considers approvals required to be taken to enter into such transactions. Absence of disclosure or approval of audit committee cannot lead to the finding of violation of provisions of the PFUTP Regulations. More so, when the loans taken have been repaid in full along with interest and these transactions are not such that they would influence the decision of the investors.

32.28. The transactions do not fall under related party transactions and hence there is no need for audit committee approval and therefore the entire basis of allegation of the PFUTP Regulations does not survive. The SCN does not portray how *Noticee nos.1 and 2* on one hand and the *Noticee no.3* on the other hand are related to each other.

32.29. The investigation report states that the *Noticee no.5* is a non-independent and non-executive director of the *Noticee no.2* since July 2020 and only repayment of loans took place in 2020-21. Hence, applicability of sub-regulations (2) of regulation 4 of the LODR is till March 2020 and clause (k) of sub-regulation (2) of regulation 4 of the PFUTP is till July 2020. However, the SCN has extended the allegation till March 31, 2021.

32.30. All allegations in SCN are untenable, false and there is no basis either in fact or in law.

33. Summary of replies filed by the *Noticee no. 3*

33.1. There is a delay in SEBI's investigation and issuance of impugned SCN.

33.2. Mr. Utkarsh Shah, the company's director passed away in August 2022 and after which the board of directors were completely reconstituted and the present board of directors were not aware or involved in the transactions carried out by the *Noticee no.3* as alleged in SCN.

33.3. The *Noticee no.3* during the period had *inter alia* engaged in the business of borrowing and lending of funds with a view to earn interest arbitrage. The company upon finding potential borrower reach out to potential creditors, who would lend funds to the company at a lower interest and the company would thereafter lend the money to such borrowers at a higher rate. Such loans to the potential borrowers were financed through the surplus/reserves of the company, loans taken from directors and also through Inter Corporate Deposits obtained by the company from third parties.

33.4. The *Noticee no.3* has been financing to various companies other than Adani Group, the details of which was provided as annexure to the reply. The *Noticee no.3* has also entered into such transactions with entities other than Adani Group companies. Its transactions are not only with Adani group. No reason has been given as to why only its transactions with Adani Group have

been singled out. Hence, it is submitted that the *Noticee no.3* had carried out the transactions with Adani Group in ordinary course of business. The *Noticee no.3* merely facilitated the lending and borrowing transactions and the same does not result in contravention of provisions of the PFUTP Regulations.

33.5. While the primary activity of the *Noticee* no 3 was trading, it also earned income from the ancillary activities from time to time. The financial statement of the company for the last three financial years shows that the major income of the company was from sale of goods (trading activities). If the proportion of income from sale of goods and income from financial assets is taken, it is evident that the company remains out of the preview of relevant NBFC Regulations on the basis of 50:50 income test *i.e.* proportion of other income and income from financial assets.

33.6. As SEBI itself has recorded in the impugned SCN that only 67% of debits and 66% of credits from the *Noticee no.3* were associated with the Adani Group, which means remaining 33% and 34% of credits involved transactions with non-Adani entities. This demonstrates that the *Noticee no.3* was engaged in legitimate business with a variety of entities and was not exclusively involved with the Adani Group.

33.7. The allegations in the SCN neither constitute '*fraud*' nor they are in connection to '*dealing in securities*' as defined in the PFUTP Regulations. The company has not entered into any transaction to buy, sell or subscribe to any securities either directly or through any other person. It does not show as to how the acts of the *Noticee no.3*, '*influenced the decision of investors in securities*' and that the acts have been '*carried out knowingly*' and to '*induce another person to deal in securities*'. Hence, the charge of '*fraud*' is not satisfied. In support of this plea, reliance is placed on the judgement passed by Hon'ble Supreme Court in the matter of Kanaiyalal

Baldevbhai Patel order (*supra*) and Hon'ble SAT order in the matter of Price Waterhouse Coopers & Co. and Others vs SEBI (*supra*).

33.8. The SCN does not provide any material to suggest negligence or connivance on part of the *Noticee no.3*. The *Noticee no.3* has not published or caused the publication of false or misleading news. The materials in the investigation report do not establish '*fraud*' by the *Noticee no.3*.

33.9. The material relied upon by SEBI, is from the fact that the director of the company was acquainted with the promoters of the Adani group. This act is not compelling enough to demonstrate meeting of mind or collusion by the company attracting violations of Regulation 4 of the PFUTP Regulations.

33.10. SEBI has alleged that the *Noticee no.3* acted as a conduit for fraudulent transactions. However, it is a well-established legal principle that the burden of proof in such cases lies upon SEBI. It is SEBI's responsibility to substantiate its allegations with credible and compelling evidence. In this case, SEBI has failed to discharge this obligation. The impugned SCN fails to articulate how or in what specific manner the *Noticee no.3* allegedly acted as a '*conduit*' for fraudulent transactions. In this regard, reliance is placed on the order passed by Hon'ble SAT in the matter of *Ess Ess Intermediaries Anand Saurashtra Society vs SEBI [(2013) SCC Online SAT 24*.

33.11. SEBI does not have jurisdiction to initiate action on the grounds of an *ultra vires* transaction. The *ultra vires* doctrine pertains to acts conducted outside the scope of a company's memorandum of association (MOA) and such issues are primarily within the purview of the company's shareholders. Matter of internal governance, such as whether a company acted beyond the scope of its MOA, fall outside SEBI's regulatory mandate and lie beyond its jurisdiction, particularly in the case of unlisted companies or entities not associated with the securities market under the SEBI Act. The concept of

ultra vires relates to whether an act is outside the company's corporate powers and not whether it constitutes a violation of the law. While certain actions may fall outside the explicit objects of a company's MOA, this does not render them illegal or fraudulent.

D. CONSIDERATION OF ISSUES:

34. I note that all *Noticees* have been personally heard and thereafter *Noticees* were further granted time to file written submissions. I have perused the written replies and submissions made by *Noticees* and have also heard their arguments during personal hearing. I note that *Noticees nos. 1, 2,4 and 5* have raised certain preliminary objections in their submissions, which are required to be dealt with, before I proceed on merit.

D.1. *Consideration on Preliminary Issues*:

a) Whether the SCN is erroneously based on the report of Hindenburg Research and which has no evidentiary value?
b) Whether the SCN is vague and does not provide adequate details for an appropriate response from *Noticees*?
c) Whether the actions of *Noticees* which have purportedly violated the provisions of the SEBI Act and regulations made thereunder are more than a decade old and hence the allegations are belated and suffer from inordinate delay?
d) Whether *Noticees* are being called upon to explain the actions of Adani Logistics Ltd. (ALL) in negation of the principle of distinct corporate identity?

a) *Whether the SCN is erroneously based on the report of Hindenburg Research which has no evidentiary value*?

34.1. It is pertinent to note that certain petitions were filed before the Hon'ble Supreme Court seeking action based on Hindenburg report. Hon'ble Supreme Court vide its order dated March 2, 2023, passed in the matter of ***Vishal Tiwari vs Union of India***, *(2024 SCC Online SC15),* inter-alia directed that SEBI shall

also investigate whether there has been a failure to disclose transactions with related parties. Hon'ble Court, vide the said order, further directed SEBI to conclude the investigation and file a status report. I note that the SCN in the matter was issued pursuant to a detailed investigation by SEBI and facts collected during that investigation. Therefore, the contention of *Noticees* in this regard is not tenable.

b) *Whether the SCN is vague and does not provide adequate details for an appropriate response from Noticees*?

34.2. As detailed in preceding paragraphs, the SCN provides details with respect to (i)fund transactions between *Noticee nos.1 and 2* through the *Noticee no.3*; (ii) details of alleged incorrect disclosures and misrepresentation of related party disclosures; (iii) details of alleged non-compliance with the required Audit Committee review/approvals; Board/shareholder approvals; (iv) details of alleged incorrect disclosures in the Annual Report; (v) details of how the aforesaid findings resulted in allegations with respect to violations of provisions of the SEBI Act, Listing Agreement, the LODR Regulations and the PFUTP Regulations. The SCN further called upon *Noticees* as to why suitable directions and penalty in terms of relevant provisions of the SEBI Act and SCR Act, 1956 should not be issued for the alleged violations of the provisions of SEBI Act, SCR Act, 1956 , Listing Agreement and SEBI Regulations. Further, relied upon and relevant documents were also provided to *Noticees*. Therefore, I find that, the SCN is not vague as contended by *Noticees* and it provides adequate details for appropriate response.

c) *Whether actions of Noticees which have purportedly violated the provisions of the SEBI Act and regulations made thereunder are more than a decade old and hence the allegations are belated and suffer from inordinate delay*?

34.3. The investigation in the instant matter was initiated pursuant to the allegations with respect to Adani group in the Hindenburg report. Reply was sought from

Adani group of companies on the allegation in the Hindenburg report. The replies filed by the Adani Group of companies were examined which warranted further investigation. Further, as detailed above, the Hon'ble Supreme Court vide its order dated March 2, 2023 passed in the matter of ***Vishal Tiwari vs Union of India***, (*supra*), directed SEBI to conclude investigation. Upon completion of investigation, the SCN dated January 15, 2024 was issued to *Noticees* based on findings of investigation. The investigation in the instant matter has been completed in a time bound manner.

34.4. Further, the SEBI Act also does not provide for any limitation for initiation of action for alleged violations. In the instant matter, once the alleged violations came to the knowledge of SEBI, investigation in the instant matter was initiated. Therefore, I do not find merit in the contention of *Noticees* that the proceedings suffer from inordinate delay.

d) Whether the Noticee no.1 is being called upon to explain the actions of Adani Logistics Ltd. (ALL) in negation of the principle of distinct corporate identity?

34.5. I note that ALL is a 100% subsidiary of the *Noticee no.1*. On April 02, 2019, ALL transferred ₹495 Cr to the *Noticee no.3*, which was utilised for repayment of loan of the *Noticee no.1*. This transaction is being alleged to be a related party transaction and was required to be disclosed by the *Noticee no.1* in the related party disclosures in the Annual Report for FY 2019-20. According to the SCN, since ALL was a 100% subsidiary, the disclosures of alleged related party transaction were required to be made by the *Noticee no.1*. Without going on merit at this stage, the preliminary objection is rejected as the SCN could raise question on this alleged violation.

35. In view of the above consideration, I am of the opinion that the preliminary objections raised by *Noticees* have been adequately addressed.

D.2. Issues for Consideration

36. After dealing with the preliminary issues, I now proceed to examine issues on merit. Having gone through various allegations levelled in the SCN and materials available on record, I find that the core issue amongst all the alleged violations is the issue of indirect loan given by the *Noticee no. 1* to the *Noticee no. 2* through the *Noticee no. 3* and the loan received indirectly from its 100% subsidiary. Whether this loan qualifies as Related Party Transaction under the earlier Listing Agreement (for the period from F.Yrs 2012-13 to 2014-15) and subsequent LODR Regulations (for the period from F.Yr 2015-16 and onwards) is the main issue. A related issue is whether there was a scheme or artifice to conceal related party transaction that otherwise fall under the Listing Agreement/LODR Regulations. If we discuss and answer these two questions, other violations alleged in the SCN can be easily adjudicated as they all are consequential to these two main alleged violations.

37. Thus, I proceed first to decide the following two main issues:

Issue no 1: Whether the loan transactions between Noticee no. 1 and Noticee no. 2 and ALL, through the Noticee no. 3 during the period from F.Yrs. 2012-13 to 2020-21 can be classified as related party transactions under the earlier Listing Agreement or subsequent LODR Regulations?

Issue no 2: Whether there was a scheme or artifice to conceal related party transaction that otherwise fall under the Listing Agreement/ LODR Regulations?

D.3. *Determination* of two main issues

D.3.1. *Issue no 1:* Whether the loan transactions between *Noticee* no 1 and *Noticee no. 2* and ALL, through the *Noticee no. 3* during the period from F. Yrs 2012-

13 to 2020-21 can be classified as related party transactions under the earlier Listing Agreement or subsequent LODR Regulations?

38. This issue would require examination of definition of "*related party*" and "*related party transactions*" during the concerned period, under the earlier Listing Agreement as well as under subsequent LODR Regulations.

39. The SCN has invoked '*substance over form*' doctrine to explain the meaning of "*related party transaction*". Hence this doctrine also requires close examination after we first see the ordinary meaning of this term.

Ordinary meaning under the Listing Agreement/LODR Regulations

40. Clause 49(VII) of the Listing Agreement considers entity to be related party of a company, if such entity is a related party under section 2(76) of the Companies Act 2013 or under the relevant accounting standards. Further, Clause 32 of the Listing Agreement provides that for the purpose of the meaning of the terms *'Associate'* and '*Related Party'* it shall have the same meaning as defined in the Accounting Standard on "*Related Party Disclosures*" (AS-18) issued by ICAI.

41. Under para 10.1 of AS-18, '*Related Party*' are considered to be related if at any time during the reporting period one party has the ability to have control over the other party or exercise significance influence over the other party in making financial and/or operating decisions. '*Control*' is defined in terms of more than 50% ownership or control of composition of the board of directors or control of composition of corresponding governing body or substantial interest in voting power or power to direct financial/operating policies.

42. Clause (zb) of sub-regulation 1 of regulation (2) of the LODR Regulations defined '*related party'* as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards. The proviso to the definition clause, which was inserted by the SEBI (Listing

Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, and came into effect from April 01, 2019, provided as under:

"Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party"

The aforementioned proviso has been substituted by the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021, *w.e.f.* April 01, 2022, which reads as under:

"Provided that:

(a) any person or entity forming a part of the promoter or promoter group of the listed entity; or

(b) any person or any entity, holding equity shares:

(i) of twenty per cent or more; or

(ii) of ten per cent or more, with effect from April 1, 2023;

in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year;

shall be deemed to be a related party:]"

Sub-section (76) of section 2 of the Companies Act, 2013 provides as under-

"related party", with reference to a company, means—

(i) a director or his relative;
(ii) a key managerial personnel or his relative;
(iii) a firm, in which a director, manager or his relative is a partner;
(iv) a private company in which a director or manager is a member or director;
(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
(vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed;

43. The applicable accounting Standard is IndAS 24, clause 9 of which defines "*related party*" as a person or entity that is related to the entity that is preparing its financial statements (reporting entity). This relation is also defined in terms of control or significant influence or group entity or joint venture or associate or being a key managerial person. Para 11 of IndAS-24 states that '*providers of finance*' are not treated as related parties by virtue of their normal dealings with an entity even though they may affect the freedom of action of any entity or participate in its decision making process. The same principle finds place in AS-18 also.

44. From the above, it is seen that as per the plain reading of the Listing Agreement or the LODR Regulations, if the *Noticee no. 3* is to be the related party of the *Noticee no. 1* or the *Noticee no. 2*, there should be control/significant influence in decision making, of one entity by another. Or it should be part of same group or a joint venture. This is not alleged in the SCN. In fact, it is not an allegation in the SCN that the *Noticee no. 3* is the related party of the *Noticee no. 1* or the *Noticee no. 2*. Thus, it is held that the *Noticee no. 3* is not a related party of the *Noticee* no. 1 or the *Noticee no. 2*.

45. The next question is whether the transaction between a party with unrelated party which benefits related party of the first entity is covered within the definition of "*related party transactions*"? Or in other words whether indirect transactions between two related parties through an unrelated party can be considered as "*related party transactions*"? It is to be kept in mind that right now we are looking

at plain meaning of the regulation and "*substance over form*" doctrine would be discussed in the next part of this order.

46. Para 10.2 of AS-18 defines "*related party transactions*" as transfer of resources or obligations between related parties, regardless of whether or not a price is charged. Similarly, clause 49(VII) of the Listing Agreement defines "*related party transactions*" as transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged. The same definition is in IndAS-24 (clause 9). Almost similar definition is in clause (zc) of sub-regulation 1 of regulation (2) of the LODR Regulation except that it refers to "*listed company*" instead of "*company*".

47. Thus, it can be seen that on plain reading of the provisions, for the time under discussion, only transactions between related parties are sought to be covered within the definition of the term "*related party transactions*". Since it has already been held that the *Noticee no. 3* is not a related party of the *Noticee no. 1* or *the Noticee no. 2*, transactions between the *Noticee no.3* with the *Noticees nos. 1 or 2* are not covered within the definition of "*related party transaction*" on plain reading of the provisions. Now I shall examine whether '*substance over form*' doctrine can be invoked to say that '*in substance*' transactions of *Noticee no. 3* with the *Noticee nos. 1 or 2* or ALL are "*related party transactions*"?

Substance over Form

48. The doctrine of '*substance over form'* is a legal and accounting doctrine, which enables authorities to probe beyond the legal form and analyse the underlying economic substance of a transactions. There has been difference in views when this doctrine can be invoked. Accordingly, *Noticees* have also objected to invocation of this doctrine on the plea that when plain reading of the regulations give clear interpretation there is no need to invoke "*substance over form*" doctrine.

49. In taxation, in the case of **McDowell and Co vs CTO (1986 AIR 649**), it was held by Hon'ble Supreme Court that colourable devices cannot be a part of tax planning and it is wrong to encourage the belief that it is honourable to avoid payment of tax by resorting to dubious methods. Subsequently many years later, Hon'ble Supreme Court in the case of ***Vodafone International Holdings B.V. vs Union of India and Anr (2012 - 341 ITR 1-SC)*** reiterated the Westminster principle that when a document or transaction is genuine, the court cannot go behind it to some supposed underlying substance. It held that "*substance over form*" approach can be invoked on the basis of facts and circumstances surrounding the transaction that the impugned transaction is a sham, fraud or tax avoidant. This judgment has provided a principle for interpretation that one has to *'look at*' a transaction rather than *'look through'* when it is a legitimate one.

50. Hence, whether "*substance over form*" doctrine can be invoked in this case would depend whether the transaction is genuine or avoidant. There is no doubt that *Noticee* have given reasons for undertaking this commercial transactions (refer paras 32.6, 33.3). It is also seen that as per SCN, loan along with interest has been paid back before the start of the investigation. Further, there is no allegation in the SCN about siphoning off money from the company or to cause loss to shareholders. Thus, *Noticees* have made out a good case for not invoking "*substance over form*" doctrine. However, I am of the view that even on these facts, it would be useful to look at some future events to understand the intention of the regulation to decide whether in substance the transactions were related party transaction. This is what is often referred to as purposive interpretation.

51. Purposive interpretation is a method of interpreting laws by focusing on the underlying purpose or intent behind the legislation, rather than solely on the literal meaning of the words. For this purpose, Hon'ble Courts often look at things like parliamentary debates, committee reports or other documents that shed light on the legislature's intent. For this purpose, I shall now examine 2021

amendment to the definition of "*relating party transactions*" in the LODR Regulations and the Board memorandum explaining the reason for the amendment.

2021 amendment to the LODR Regulations

52. The LODR Regulations came into force on September 2, 2015. In November 2021 there were amendments to the definitions of both "*related party*" and "*related party transaction*". The definition of "*related party*" was broadened by the 2019 amendment by deeming a person or entity as related party which belongs to the promoter or promoter group of the listed entity and holds 20% or more of the shareholding. This was reduced to 10% by the 2021 amendment. However, this amendment was given prospective effect from April 1, 2023. This amendment does not concern the issue in examination here. It is the amendment to the "*related party transaction*" that directly concerns the issue.

53. Before the 2021 amendment, clause (zc) of sub-regulation 1 of regulation (2) of the LODR Regulations defined '*related party transaction'* as under–

> *"related party transaction" means a transfer of resources, services or obligation between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract" …*

54. This was substituted by the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021, *w.e.f.* April 1, 2022. As per the footnote, the amendment was to come into effect from April 1, 2022 unless otherwise specified in the respective provisions. The new definition is as under:

> "*related party transaction" means a transaction involving a transfer of resources, services or obligations between:*
>
> *(i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or*

(ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract…; (Emphasis supplied)

55. Thus, it can be seen that before the 2021 amendment only transaction between related party were covered in the definition of *"related party transaction*". However, after the 2021 amendment, transaction between a listed entity/any of its subsidiary and any person (which includes unrelated party also) has also been included within the definition of "*related party transaction*", if the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiary. There are three very important parts of this amendment and they are:

(i) The new definition of "*related party transaction*" is made effective from a prospective date *i.e.* April 1, 2022;

(ii) A glide path is provided with respect to increased scope (transactions between a listed entity and unrelated party) by making it effective from April 1, 2023; so that time is given to listed company to adjust to this new change; and

(iii) The increased scope of the definition is not through clarificatory or declaratory amendment and is part of the main substantive definition.

56. The above three important parts of the amendment makes it clear that it is not clarificatory or declaratory amendment. It is a substantive amendment from a prospective date with a glide path. The intention of the regulation making authority appears to be clear that past transactions between a listed entity/any of its subsidiary and unrelated entity was not sought to be covered in the increased scope of the definition of "*related party transactions*". For arriving at

this conclusion reliance is placed on the decision of Hon'ble Supreme Court in the matter of ***Virtual Soft Systems Ltd. vs CIT (9 SCC 665),*** *where Hon'ble Supreme Court held that:*

" 50. *It may be noted that the amendment made to Section 271 by the Finance Act, 2002 only stated that the amended provision would come into force effect from 1-4-2003. The statue nowhere stated that the said amendment was either clarificatory or declaratory. On the contrary, the statue stated that the said amendment would come into effect on 1-4-2003 and therefore, would apply only to future periods and not to any period prior to 1-4-2003 or to any assessment year prior to Assessment Year 2004-2005. It is the well-settled legal position that an amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is a declaratory and clarificatory provision. If there is no such clear statement in the statue itself, the amendment will not be considered to be merely declaratory or clarificatory."*

57. It is settled law that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. In this regards, the Hon'ble Supreme Court *in* ***Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Ltd. (2014) 12 SCR 1037)*** has held as under:

31.Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset…."

34……. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary

and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors.

39(d)…… "Notes on Clauses" appended to Finance Bill, 2002 while proposing insertion of proviso categorically states that "this amendment will take effect from 1st June, 2002. These become epigraphic words, when seen in contradistinction to other amendments specifically stating those to be clarificatory or retrospectively depicting clear intention of the legislature.

58. The discussions above make it clear that the 2021 amendment to the LODR Regulations is neither clarificatory nor there is any express or implied intention to apply it to past transactions. On the contrary, intention is clear to apply it to future transactions as it is not only effective from a future date, it further provides a glide path to implement the increased scope of the definition. Any interpretation to the effect that this amendment also applies to past transaction would be a wrong and incorrect interpretation. It is clear that in this case the alleged related party transactions have been reversed before coming into effect of the 2021 amendment. Law cannot be interpreted in a manner that it allows time to listed companies to adjust their transactions to the new increased scope (glide path) while intending to punish those who have already adjusted their transactions before coming into effect of the increased scope. Agreeing with the alleged violations in the SCN on this issue would amount to agreeing with this wrong and incorrect interpretation which this authority must avoid.

Examination of the Board Memorandum to know the intent

59. Though it is clear from the 2021 amendment that it never intended to apply to past transactions, it would also be useful to look at supporting documents to see the real purpose behind this amendment.

60. As stated earlier that for purposive interpretation Hon'ble Courts often look at things like parliamentary debates, committee reports or other documents that

shed light on the legislature's intent. In the context of amendment to LODR Regulations, the relevant document to examine would be the Board Memorandum moving the 2021 amendment before the SEBI Board.

61. SEBI at its Board meeting held on September 28, 2021, placed before the Board the memorandum on '*Review of regulatory provisions on Related Party Transactions'*. The objective of the memorandum was to review the regulatory provisions and consequent amendments to the definition of '*Related Party Transaction'* in the LODR Regulations. Certain paragraphs of the Board memorandum have been given below in order to understand the rationale for introducing these amendments.

> *Para 3.2.3 - Rationale*
>
> *b) It was also observed that certain innovative structures have been used, in the recent past, to avoid classification of transactions as RPTs, thereby avoiding regulatory compliance and disclosure requirements. In order to address the issues, the definition was* ***proposed to be broadened*** *to include transactions which are undertaken, whether directly or indirectly, with the intention of benefitting related parties.*
>
> *Para 3.2.4 - Views*
>
> *d) It is* ***also desirable to include transactions with unrelated parties****, the purpose and effect of which is, to benefit the related parties of the listed entity or any of its subsidiaries. It is important* ***to consider substance of the relationship and not merely legal form*** *as part of good governance practice.*
>
> *e) PMAC (*Primary Market Advisory Committee*), while agreeing with the proposal, has further recommended* ***to give enough time to the listed entities for implementation.***
>
> [emphasis supplied]

62. Some words in the above extract have been given bold emphasis as they spell out the real intention behind this amendment. The Board clearly noted that it intended to broaden the scope of the existing definition of "*related party*

transaction" to include transactions with unrelated parties, the purpose and effect of which is to benefit the related party. This intention made it clear that pre-amendment, this was not part of the definition of "*related party transaction*". Board also noted that it was important to consider substance over form. But while doing it also decided to give enough time to the listed entities for its implementation (as per the recommendation of the PMAC). This means that the Board's intention was to provide clarity for future transactions and made it clear that transactions similar to impugned transactions were never intended to be covered in the past..

63. Thus, in the light of above discussion even if '*substance over form*' doctrine is invoked, it cannot be said that there was violation of Listing Agreement or the LODR Regulations during the financial years 2012-13, to 2020-21, since the Listing Agreement/LODR regulations as it existed for these years never intended to cover transaction between unrelated parties.

64. Notices have also cited protection provided under Article 20(1) of the Constitution of India as per which a person cannot be penalized for any wrong doing except for the violation of law that was in force at the time of commission of the act alleged to be committed. It is seen that this Article is for protection against criminal conviction. Thus, to that extent it may not have direct applicability here. However, the principle laid down in this Article is important. Criminal laws cannot be amended by Parliament with retrospective effect due to this Article of our Constitution. Separately delegated authorities also do not have power to amend regulation with retrospective effect. Thus, applying the same principle, *Noticees* cannot be punished for violation of regulation which came into effect on a date later than the date when the alleged violation took place.

<u>Past precedent in SEBI on non-applicability of the 2021 amendment to past transactions</u>

65. It may also be seen that in the past SEBI has taken a view that the 2021 amendment to LODR Regulations cannot be applied to past transactions. The

understanding of SEBI on applicability of amendment in the LODR regulations is seen in the SEBI order dated January 24, 2023 passed in the matter of ***Coffee Day Enterprises Ltd***. In which the following has *inter alia* been observed –

> *52…….. I note that Regulation 2(zc) which defines a 'related party transaction' and Regulation 23 which prescribe the need for approval of Audit Committee and shareholders of a listed company, prior to their amendment, which was applied prospectively with effect from April 01, 2022 onwards, did not cover transactions involving subsidiaries of a listed company and only after the amendment, the said provisions now include transactions involving subsidiaries. I note that at the relevant time when the transactions in question involving transfer of funds from subsidiaries to MACEL were done, though the amended provisions in Regulation 2(zc) and Regulation 23 had not come into effect, CDEL on its own ought to have treated its subsidiaries as equivalent to a listed company (i.e. itself), since it derived all its value from its subsidiaries and had no inherent value of its own……*
> *In such circumstances, it should have followed the spirit of the pre-amended regulation by treating the concerned transactions as related party transactions and following the norms applicable to such transactions. Considering the same, though I am convinced that the Noticee had not followed the prescribed norms for related party transactions, I am constrained to let off the Noticee in this respect purely on technicalities.*

66. It is clarified that the order passed by one quasi-judicial authority is not binding on the other similar quasi-judicial authority. However, as a matter of practice, it is always desirable to have consistency in orders passed by different quasi-judicial authorities. When one quasi-judicial authority differs from other, it must write reasons for disagreements. In this case, I agree with the decision of the quasi-judicial authority in the above case to the extent that *Noticee* was not required to classify the impugned transactions as the related party transactions due to prospective amendment of the LODR Regulation. However, I don't agree with the observation in the order which has cast morale responsibility in the absence of legal requirement. In my views, as a quasi-judicial authority my responsibility is to pass the order based on the legal interpretation of law,

according to which the impugned transactions have not held to be related party transactions for the relevant time period.

67. It is also seen that *Noticees* have also cited SEBI's stand before Hon'ble SAT in the matter of ***ITC vs SEBI*** (Appeal no.357 of 2019), with respect to pre-2021 amended related party transactions definition. In this case, the petitioner (ITC) pleaded that the transaction between it and the third party is related party transaction as it benefits promotors. This plea was not accepted by SEBI who argued that "*the plain language of the definition/provision as quoted above would show that a specific transaction would be a related party transaction only when the transaction is between a specific Company and a related party*". SEBI submitted that each and every transaction was either between the listed company and a third party or the promoters and a third party, and none of the transactions were between the listed company and its related party. In response to this, petitioner argued that the transfer is nothing but benefits to be derived by promoter in composite agreements and hence it should be classified as related party transaction and narrow interpretation should not be adopted. Hon'ble SAT upheld the views of SEBI and held that

> *"the language of the provisions needs no interpretation as the language of the same is plain. While SEBI as a regulator define related party transaction as a transaction "between a listed entity (Company) and a related party" the Parliament defines the terms as per Section 188 of the Companies Act, 2013 as "a transaction of a Company with a related party". None of the provisions leave any scope for interpretation of the same……Through the interpretation, the scope of the definition cannot be widened to bring in its scope any transaction in which the directors etc. would have some real or perceived interest. The Parliament as well as the regulator SEBI did not intend to bring such transactions within the scope of the restrictions put on the related party transactions."*

68. Hence, the transactions between appellant and third party which resulted in benefit to related party was not held to be a related party transaction by Hon'ble SAT under the pre-amended provisions. This decision, when seen along with the stand of SEBI before Hon'ble SAT, makes it clear that SEBI in past had a view that transactions similar to impugned transactions were not covered within the definition of related party transactions.

69. In view of the above, the allegation against *Noticee nos. 1 and 2* with respect to alleged violations of Listing Agreement and LODR regulations which are detailed at para 24 above, do not stand established.

Recommendations from the report of Expert Committee submitted to Hon'ble Supreme Court

70. While it has already been held that there is no violation of Listing Agreement and LODR regulations, it would also be relevant to look at the report of the Expert Committee constituted by Hon'ble Supreme Court, subsequent to the Hindenburg Report.

71. This Committee was chaired by Justice Abhay Manohar Sapre, former Judge of Hon'ble Supreme Court. It submitted its report dated May 6, 2023 to the Hon'ble Supreme Court. As regards '*Related Party Transactions',* the Expert Committee noted as under:

> Para 29 under 'Chapter -1 'Executive Summary and Preface'
>
> *"At the heart of the allegations about disclosure of alleged related parties and transactions with them is the definition of the terms 'related party' and 'related party transaction'. Both these terms have been amended by SEBI substantially in November 2021 and with a deferred prospective effect – with some changes taking effect on April 1, 2022 and others on April 1, 2023. India has among the widest definition of these terms across jurisdictions."*

Para 30 under Chapter -1 ‘Executive Summary and Preface’

“Transactions by related parties with subsidiaries of listed companies and transactions with unrelated third parties that are intended and purposed to benefit a related party have been explicitly brought into the fold. While amendments were made in November 2021, they were given deferred effect to enable companies to re-arrange their affairs to become compliant with the law. Providing a deferred effect to enable society to re-arrange affairs provides a ‘glide path’, which is good practice in economic legislation, where disruptive changes must not hurt the ease of appreciating what is expected of members of society.”

Paras 86 to 89 under Chapter-4 ‘Allegations on Related Party Transactions’

“86 As seen above, the approach adopted by SEBI has been to explicitly stipulate with a deferred prospective effect from April 1, 2022, that transactions involving a subsidiary of a listed company would be deemed to be a transaction with the listed entity. Likewise, SEBI has explicitly stipulated with effect from April 1, 2023 that transactions with an unrelated third party would be regarded as a transaction with a related party, if the purpose and intent of the transaction is to benefit a related party. The provision of a deferred prospective effect has enabled listed entities to rearrange their affairs in a manner that is not violated of the law. Such as ‘glide path’ is a matter of good practice in economic legislation, where disruptive changes do not hurt the ease of appreciating what is expected of members of society, to be compliant and to ensure compliance.

87. Having adopted the path of making explicit stipulations prospectively, the path of testing the principles underlying the regulations governing related party transaction has been abandoned. That being so, it would be legally infeasible to attack past transactions on the standards that have later been made applicable with prospective effect.

88. The Committee does not intend to criticise SEBI for having adopted the approach of explicitly stipulating requirements with prospective effect, in preference to the approach of testing the existing law on a principles-based approach. Such an adoption of choice in SEBI's prerogative in its legislative capacity, and an expression of its best judgement of what is appropriate policy. So long as there is nothing unreasonable or subversive in choosing one path over the other, there is no scope for an adverse comment on the approach or to arrive at a finding of a 'regulatory failure'.

89. However, the Committee believes that once an approach is adopted, it must be implemented and adhered to, in accordance with law. Predictability and certainty are vital elements of regulation since a majority of society would desire to be compliant and therefore would wish to know what is ought to do, to remain compliant. If past transactions were compliant with the law as was applicable when they were transacted, and more so, if changes have been made subsequently to outlaw a repetition of such past transactions, it would follow that there can neither be a repetition of the same structures in future nor can there be an attack on the validity of the past transactions."

72. The aforesaid Expert Committee Report was submitted before the Hon'ble Supreme Court. The Apex Court took cognizance of the report and in its judgement dated January 3, 2024 in the matter of ***Vishal Tiwari vs Union of India and Others [supra]***, with regard to the amendment of the LODR Regulations, inter alia, held as follows:

" 22. On 21 November 2021, substantial amendments were made to the definition of "related party" with deferred prospective effect from 1 April 2022 and 1 April 2023. In these amendments, the definition of "related party" was amended to include persons holding 20% or more in the listed company whether directly or indirectly or on a beneficial interest basis under Section 89 of the Companies Act, 2013 with effect from 1 April 2022. However, with effect from 1 April 2023, the deemed inclusion would bring within the scope

of the term "related party" persons who hold 10% or more of the listed company. The Expert Committee report has opined that these amendments were necessitated to address the mischief or contrivance of effecting a transaction involving a transfer of resources between a listed company and a third party which is not a related party, only to technically escape the rigours of compliance applicable to a related party transaction, to thereafter transfer the resources from the unrelated party to a related party. The Committee further opined that deferred prospective application of regulations is not bad practice in commercial law, as it allows the market to adjust to the proposed changes and avoid uncertainty.

23. However, the petitioner argues that these amendments to the LODR Regulations have facilitated the mischief or contravention with regard to related party transactions by the Adani Group. This, as the petitioner argues, is because the series of amendments have made it difficult to establish contravention of law by first opening a loophole and then plugging the loophole with deferred effect. The petition has also argued that while initially the Director, their relative, or a relative of a key managerial persons was considered a related party, the amendments have changed this situation to hold that a person/entity be deemed "related party" only if the shareholding of that person/entity is at least 20%. These amendments have allegedly made it difficult to investigate the acquisition against the Adani Group for flouting minimum public shareholding regulation by engaging in related party transactions through FPIs. It has also made it difficult to assign the specific contravention of a regulation to the Adani Group.

24. In essence, the petitioners have argued that the amendments to the two regulations amount to regulatory failure on the part of SEBI and have accordingly prayed that SEBI be directed to revoke the amendments to the FPI Regulations and LODR Regulations or make suitable changes. It may be pointed out that these arguments and prayers were not present in the

initial petitions. They have only propped after the report of the expert committee dated 6-5-2023. The Report stated that in view of the amendments to the regulations, it cannot return a finding of regulatory failure by SEBI. Thereafter, the petitioners have made arguments to belie the finding of the expert committee Report.

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28. We find merit in SEBI's arguments and do not find any reason to interfere with the regulations made by SEBI in the exercise of its delegated legislative powers. SEBI has traced the evolution of its regulatory framework, as noticed above, and explained the reasons for the changes in its regulations. The procedure followed in arriving at the current shape of the regulations is not tainted with any illegality. Neither has it been argued that the regulations are unreasonable, capricious, arbitrary, or violative of the Constitution. The petitioners have not challenged the vires of the Regulations but have contended that there is regulatory failure based on SEBI's alleged inability to investigate which is attributed to changes in the regulations. Such a ground is unknown to this Court's jurisprudence. In effect, this Court is being asked to replace the powers given to SEBI by Parliament as a delegate of the legislature with the petitioners' better judgement. The critique of the regulations made as an afterthought and based on a value judgement of economic policy is impermissible……

67.2 No valid grounds have been raised for this court to direct SEBI to revoke its amendments to the FPI regulations and the LODR Regulations which were made in exercise to its delegated legislative power. The procedure followed in arriving at the current shape of the regulations does not suffer from irregularity or illegality. The FPI regulations and the LODR Regulations have been tightened by the amendments in question;"

73. From the extracts of the Expert Committee report and the decision of Hon'ble Supreme Court, produced above, the following points are noted with respect to 2021 amendment to LODR Regulations:

i) Expert committee was of the view that deferred prospective effect was given to the amendment to enable companies to re-arrange their affairs to become compliant with the law. The glide path provided is a good practice in economic legislation, where disruptive changes must not hurt the ease of appreciating what is expected of members of society.

ii) Expert Committee was of the view that having adopted the path of making explicit stipulations prospectively, it would be legally infeasible to attack past transactions on the standards that have later been made applicable with prospective effect.

iii) Expert Committee was of the view that adoption of approach of explicitly stipulating requirements with prospective effect, in preference to the approach of testing the existing law on a principle-based approach is prerogative of SEBI in its legislative capacity. So long there is nothing unreasonable or subversive in choosing one path over the other, there is no scope for an adverse comment on the approach or to arrive at a finding of regulatory failure. However, once an approach is adopted, it must be implemented and adhered to, in accordance with law, in the interest of predictability and certainty.

iv) After the submission of the Expert Committee report to Hon'ble Supreme Court, petitioner argued before the Apex Court that these amendments to the LODR Regulations have facilitated the mischief or contravention with regard to the related party transactions by Adani Group. It was also argued that these amendments would make it difficult to establish contravention by first opening a loophole and then plugging the loophole with deferred effect. It also submitted that this amounts to regulatory failure and prayed that SEBI be directed to revoke the amendments.

v) Hon'ble Supreme Court did not find any reason to interfere with the regulations made by SEBI in the exercise of its delegated legislative powers

and held that the procedure followed in arriving at the current shape of regulations is not tainted with any illegality. Hon'ble Supreme Court also held that no valid grounds have been raised for this court to direct SEBI to revoke amendment to the LODR Regulations which was made in exercise of its delegated legislative power. It also held that the procedure followed in arriving at the current shape of the regulations did not suffer from irregularity or illegality and that LODR Regulations have been tightened by the amendments in question.

74. From the above, it can be seen that the finding arrived by me at paragraph 69 that there is no violation of violations of Listing Agreement and LODR regulations by *Noticees,* is consistent with the principal/interpretation followed by the Expert Committee and accepted by Hon'ble Supreme Court. .

D.3.2. *Issue no 2:* Whether there was a scheme or artifice to conceal related party transaction that otherwise fall under the Listing Agreement/LODR Regulations?

75. The SCN has also alleged that there is violation of clauses (b) and (c) of section 12A of the SEBI Act, 1992 read with sub-regulations (c) and (d) of regulation 3; sub-regulation (1) of regulation (4); clauses (f) and (r) of sub-regulation (2) of regulation (4) (for the complete investigation period) and clause (k) of sub-regulation (2) of regulation 4 (for period from February 01, 2019) of the PFUTP Regulations. These allegations are against *Noticees nos. 1, 2 and 3 and vicarious* liability is fastened on *Noticee nos. 4 and 5* by invoking section 27 of the SEBI Act.

76. Before examining these provisions, it would be useful to look at the exact allegation in the SCN with respect to violations of provisions of the PFUTP Regulations. The allegations read as under: (refer paras 24.6 and 24.8 of this order)

"The Noticee no.4, being the Chairman & Managing director of the Noticee no.1 and also a director of the Noticee no.2; and the Noticee no.5 being the Managing director of the Noticee no.2 and also a director of the Noticee no.1 and further being part of the Finance Committee and Management Committee while approving the above stated financial transactions are further alleged to be engaged in acts of devising a scheme and an artifice to conceal related party transactions, that come under the ambit of then Listing agreement /SEBI LODR Regulations by circumventing the relevant laws governing the related party transactions.

The Noticee no. 3 has knowingly facilitated the execution of the above scheme and artifice created by Noticees nos. 1, 2, 4 and 5, whereby funds have been routed through it."

77. From the above, it can be seen that the main allegation revolves around the premise that these transactions were '*in substance*' related party transactions and *Noticee nos. 4 and 5* allegedly engaged in acts of devising a scheme/artifice to conceal these related party transactions.

78. Once, it has been held that even after invoking the substance over form approach, these transactions cannot be classified as related party transactions for the period in question, the entire basis of charging *Noticees* for the PFUTP violations falls.

79. On merit, *Noticees* have submitted that the impugned transactions were genuine business commercial transactions, undertaken in the usual and ordinary course of business of the *Noticee no. 1, 2 and 3*, carried out in accordance with the underlying documents and pursuant to requisite corporate approvals. Further, it has been submitted that all monies that were lent by the *Noticee no. 1* have been repaid, along with the interest. There is no diversion or siphoning off of funds and in fact, there is not even an allegation of diversion or siphoning off of funds or loss to investors in the SCN. According to *Noticees,* there is no case of fraud and/or violation of PFUTP regulations for these reasons. *Noticee nos. 4 and 5*

have also submitted a list of four such cases wherein, in the past, SEBI has not made allegations of fraud for violation of related party norms under the provisions of the LODR Regulations.

80. It is agreed that there is no allegation of siphoning off of money or diversion of funds or loss to investors in this case. All the loans with interest was paid back even before the start of the investigation. Details were obtained from the relevant departments of SEBI and it was seen that in some cases of related party transactions violations (not in all cases) the provisions of PFUTP regulations have been invoked. These cases are different to the extent that in this particular case, it has already been held that there is no violation of provisions of related party transactions and all the loan with interest has come back before the start of investigation. Nevertheless, these facts are required to be examined in the context of relevant legal provisions of the SEBI Act 1992 and PFUTP Regulations

81. It is seen that the definition of "Fraud" is very wide in clause (c) of regulation 2 of the PFUTP Regulations, which is as under

"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

82. Even in this broad definition, in my view, there are a few important facts like (i) there is no allegation of siphoning off of money or diversion of fund or loss to investors, (ii) all the money has come back with interest before start of the investigation, and (iii) the impugned transactions have not been held as related party transactions; which will make it very difficult to call impugned transactions as manipulative or fraudulent transactions or unfair trade practice. Once there is no requirement of disclosures / approval, most of the clauses of the definition of the term 'Fraud' would become inapplicable.

83. It is also seen that related party transactions by themselves are not prohibited in law and are a common form of business transactions. The regulatory framework governing related party transactions intends to provide safeguards in terms of the appropriate disclosure and approval requirements. Once, it is held that there is no violation of provisions of the LODR Regulations as impugned transaction is not related party transaction; and the amount has come back with interest in normal due course before the start of the investigation, it would be incorrect to categorise such transaction as manipulative or fraudulent transactions or unfair trade practice unless there are other evidences which proves that there is

actually a fraud in these transactions. However, in the instant case, there is no such allegation or evidence in the SCN. Hence, it is held that facts of this case do not meet the requirement of the definition of the term “Fraud”.

84. *Noticees* have raised an important additional point that not only “*fraud*” is not proved in the SCN, there is also no allegation of how the fraud has happened while “*dealing in securities*”. They have quoted the Hon’ble Supreme Court judgments to contend that to invoke Section 12A of the SEBI Act and PFUTP regulations, there has to be “*fraud*” while “*dealing in securities*”.

85. Since it has already been held that facts of this case do not meet the requirement of the definition of the term “Fraud”, it is held that for this reason there is no violation of provisions of the PFUTP Regulations by *Noticees*. Accordingly, it is not deemed necessary to further examine the issue of “dealing in securities” raised by *Noticees*.

86. Thus, it is held that there is no violation of sub-section (b) and (c) of section 12A of the SEBI Act as well as provisions of the PFUTP Regulations as alleged in the SCN by *Noticee*.

D. 3.3 Other violations alleged in the SCN

87. Apart from two issues discussed above, following other violations are also alleged in the SCN against *Noticees* (refer paragraphs 24.3, 24.4, 24.5 and 24.7 of this order):

(i) *Noticee nos. 1 and 2*, in their Annual reports had knowingly made incorrect disclosures and misrepresented Related Party disclosures for six years i.e., F.Yrs. 2012-13; 2013-14; 2014-15; 2018-19; 2019-20 and 2020-21.

(ii) *Noticee nos.1 and 2*, have not complied with the required Audit Committee review/ approvals for two years (2012-13 & 2018-19).

(iii) There are no correct and fair disclosure of such transactions and outstanding balances in the Annual Report of *Noticee nos.1 and 2* for six years i.e., F.Yrs. 2012-13; 2013-14; 2014-15; 2018-19; 2019-20 and 2020-21.

(iv) *Noticee nos. 4 and 5* have made wrong and false certification of financials of the *Noticee nos.1 and 2* for six years i.e., F.Yrs. 2012-13; 2013-14; 2014-15; 2018-19; 2019-20 and 2020-21.

88. The above allegations against the *Noticees nos. 1, 2, 4 and 5* can be established only if it is proved that the transactions between *Noticee nos.1 and 2 and* ALL through *Noticee no.3* qualify to be termed as related party transactions. As discussed in the earlier paragraphs all these other violations are consequential to alleged violation of not classifying impugned transactions as related party transactions. As it has been held that the impugned transactions were not related party transactions, these allegations in the SCN also do not stand. Therefore, allegations against *Noticee no.1, 2, 4 and 5* which have been detailed above cannot be sustained.

E. Conclusion

89. In view of above, following is held:

89.1. There is no violation of Listing Agreement or LODR Regulations as the impugned transactions do not qualify as "*related party transactions*" for the reasons discussed in detail in the earlier part of the order. Same is reproduced in brief as under:

i) Plain reading of Listing Agreement and LODR Regulations reveals that transactions between a listed company with unrelated party is not covered within the definition of "*related party transactions*" as it existed during the time when impugned transactions took place.

ii) Even if we adopt "*substance over form*" doctrine, it is held that the definition of "*related party transactions*" as it existed that time never intended to include within its scope transactions between a listed

company and unrelated party. This conclusion is derived based on deferred prospective 2021 amendment to the LODR Regulations which enlarged the scope of the definition of "*related party transaction*" and included for the first time transactions between a listed company/its subsidiary and unrelated party, the purpose and effect of which is to benefit a related party of the listed entity/its subsidiary. This amendment was made effective from a prospective date of April 1, 2022 and also provided a glide path till April 1, 2023. Reliance was also made on Board memorandum related to this amendment which made it clear that the amendment was to broaden the scope of the definition of "*related party transaction*" and include within its scope what was not included before.

iii) 2021 amendment to the LODR Regulations is substantive amendment and as per accepted legal jurisprudence cannot apply to past transactions.

iv) Past precedents in SEBI also shows that SEBI has consistently taken the views that before 2021 amendment to the LODR regulations, definition of "*related party transaction*" did not include within its scope the enlarged scope introduced though 2021 amendment to the LODR Regulations.

v) Expert Committee, appointed by Hon'ble Supreme Court in ***Vishal Tiwari case (supra)***, also held that the deferred prospective amendment of 2021 to the LODR Regulations made it clear that the impugned transactions were not included within the scope of "*related party transaction*" for the period before the amendment. It also found the amendment to be the prerogative of SEBI in its legislative capacity and did not find it to be a case of regulatory failure. It also advocated that once a choice has been made to apply this amendment to prospective transactions, it would be legally impermissible to attack

past transactions. In response, the petitioner in the aforementioned case contended before the Hon'ble Supreme Court that this 2021 amendment to the LODR Regulations must be revoked. Hon'ble Supreme Court rejected the plea of the petitioner and held that procedure followed in arriving at the current shape of regulations is not tainted with any illegality. Hon'ble Supreme Court also held that no valid grounds have been raised to direct SEBI to revoke its amendments to the LODR Regulations which have been tightened by this amendment.

89.2. There is no violation of Section 12A of the SEBI Act and PFUTP Regulations as alleged in the SCN for the reasons discussed in detail in the earlier part of the order and in brief as under:

i) The main allegation of violation of Section 12A of the SEBI Act and PFUTP Regulations in the SCN flows from non-classification of impugned transactions as "*related party transaction*". Once it is held that there is no violation on that account, the charge under Section 12A of the SEBI Act and PFUTP Regulations do not stand.

ii) On merit too, it is held that impugned transactions cannot be classified as manipulative or fraudulent transactions or unfair trade practice since: (i) there is no allegation of siphoning off of money or diversion of fund; (ii) all the money has come back with interest before the start of the investigation; and (iii) the impugned transactions have not been held as related party transactions. The SCN does not refer to any evidence (other than related to non-classification of impugned transaction as related party transactions) which can be used for considering the impugned transaction as fraudulent transaction in the absence of violation of the LODR Regulations.

89.3. Once, it is held that there is no violation of above two main issues, it logically leads to conclusion that there is no violation of all other related violations alleged in the SCN and listed at para 24 above.

F. Direction

90. Accordingly, having considered the matter holistically, I find that the allegations made against *Noticees* in the SCN are not established. Considering the above, the question of devolvement of any liability on *Noticees* does not arise and hence the question of determination of quantum of penalty also does not require any deliberation. I, therefore, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with sub-sections (1) and (4) of section 11, sub-section (4A) of section 11 and sub-sections (1) and (2) of section 11B of the SEBI Act, 1992 and sub-sections (1) and (2) of section 12A of the SCR Act, 1956 hereby dispose of the instant proceedings against *Noticees* without any direction.

KAMLESH CHANDRA VARSHNEY
Digitally signed by KAMLESH CHANDRA VARSHNEY
Date: 2025.09.18 15:58:51 +05'30'

DATE: September 18, 2025 **KAMLESH C. VARSHNEY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA